Supreme Court, U.S.
FILED
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NO. 97-1472

In The
Supreme Court of the United States

October Term, 1997

MICHAEL A. HADDLE,

Petitioner,

vs.

JEANETTE G. GARRISON, DENNIS KELLY, G. PETER MOLLOY, JR., HEALTHMASTER, INC. CHRISTOPHER GARRISON, individually and as Trustee for certain trusts, and JOHN DOES 1 through N, individually and as Trustees of certain trusts,

Respondents.

On Petition for a Writ of Certiorari
to the United States
Court of Appeals for the Eleventh Circuit

RESPONDENT G. PETER MOLLOY'S RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

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STATEMENT OF THE CASE

1. Course of Proceedings and Disposition of the Court below.

Petitioner Haddle filed an action in the District Court for the Southern District of Georgia asserting one federal claim under 42 U.S.C. Section 1985(2) and several state law claims against Respondents Jeanette Garrison, Healthmaster, Inc. (n/k/a "HLM"), G. Peter Molloy, Dennis Kelly and others. Respondents Garrison and HLM filed Motions to Dismiss which Respondents Molloy and Kelly joined. The District Court dismissed Haddle's 42 U.S.C. Section 1985(2) claim under the binding precedent of the Eleventh Circuit's holding in Morast v. Lance, 807 F.2d 926, (11th Cir. 1987). The District Court also dismissed Haddle's state law claims without prejudice after declining to exercise supplemental jurisdiction over them. Haddle appealed to the United States Court of Appeals for the Eleventh Circuit which issued an opinion and judgment adverse to him on December 5, 1997. Haddle timely filed a Petition for a Writ of Certiorari to this Court.

Respondent Molloy's Response to Petitioner's Statement of Facts.

1. Statement of Facts

From September 22, until 1986 until approximately April 13, 1995 Haddle was an employee of HLM. On March 8, 1995, Garrison, HLM and others, but not Molloy, were indicted in the United States District Court

for the Southern District of Georgia. In April 1995, Healthmaster Home Health Care, Inc. ("HHHC"), a wholly owned subsidiary of HLM filed for protection under Chapter 11 of the Bankruptcy Code. In connection with the bankruptcy proceeding, most of the employees of HLM, including Haddle and Molloy, transferred their employment to HHHC. The Bankruptcy Court appointed a Trustee to oversee the affairs of HHHC. The Bankruptcy Court-appointed Trustee elected to retain Respondent Molloy as the President of HHHC.

During the investigation that led up to the indictment of HLM and others, and the subsequent bankruptcy filing, Haddle alleges that he cooperated with federal agents. Haddle was subpoenaed to go before the grand jury but admits that he did not testify due to the press of time. Haddle does not allege that he was a party to the criminal case brought against HLM and others, or any other federal proceeding; he only alleges that he was to be a potential witness in the criminal case against others.

On June 21, 1995, Molloy, then president of HHHC, with the approval of the Bankruptcy Trustee, terminated Haddle's employment with HHHC. Haddle alleges that Molloy terminated Haddle's employment on the instructions of Jeanette Garrison, Kelly, and HLM in retaliation for Haddle's purported cooperation in the criminal investigation and in an attempt to intimidate Haddle from testifying in the federal criminal trial against others.

2. **<u>The Testimony of Robert Pittard is not in the record below.</u>**

Petitioner Haddle refers extensively in his brief to certain testimony of Robert Pittard, a witness who alleges he overheard conspiratorial conversations between Garrison and Molloy about wrongfully terminating Haddle. However, Pittard's testimony is not a part of the record below in this case. Pittard submitted an affidavit after judgment had been entered in the District Court and while the case was on appeal to the Eleventh Circuit Court of Appeals. Haddle admitted in his brief to the Eleventh Circuit that the Pittard affidavit was not in the Record because discovery had been cut short by the District Court's order granting Respondents' Motions to Dismiss. Respondents objected in their briefs to the Eleventh Circuit to Haddle's use of testimony that was outside the record on appeal.

Haddle's counsel brought a separate action in the United States District Court for the Southern District of Georgia on behalf of John O'Neal, an employee of another company owned by Respondent Garrison. O'Neal charged that Respondents Garrison, HLM, Molloy and others wrongfully conspired to terminate his employment.

As Haddle states in of his brief, Pittard did testify at the O'Neal trial. However, Haddle fails to disclose that Pittard testified that he had previously represented HLM at Haddle's appeal for unemployment benefits. At that hearing, Pittard testified <u>under oath</u> to the hearing

officer that Haddle had been terminated because he had disclosed confidential company documents to a third party. [Tr (Vol 3): 35] Pittard did not say anything to the hearing officer about Haddle being terminated in retaliation for cooperating with the Government. [Tr (Vol 3): 35] Pittard also acknowledged in his trial testimony that he had had a serious disagreement with Garrison when Garrison and Molloy caught him paying a contractor $3,200 and taking back a $1,000 kickback. [Tr (Vol 3): 37&38] Pittard admitted that he had written a company check to the contractor for $3,200, accompanied the contractor to the bank, and after the contractor cashed the check, he had instructed the contractor to give him back $1,000. The contractor did so. [Tr (Vol 3): 37 & 38]

3. **The O'Neal v. Master Health Plan, Inc. companion case is not in the record below.**

Petitioner Haddle refers to the companion case of O'Neal v. Master Health Plan, Inc. for further proof of his allegation that Respondents Garrison, Molloy and Kelly conspired to wrongfully discharge another employee (O'Neal) in the same manner in which Respondents conspired to wrongfully terminate Haddle. However, none of the O'Neal material is in the record below.

Assuming, however, that this Court chooses to consider the O'Neal case, it does not support Haddle's allegations against Respondent Molloy. Instead the O'Neal case supports Respondent Molloy because the trial court granted judgment as a matter of law to

Molloy on the claim that Molloy had been involved in terminating O'Neal's employment. Trial Judge Alaimo expressly ruled:

> Well, I do not know of any evidence that tied him [Molloy] into the discharge or the placing on administrative leave. So I am going to grant that motion. ... He was just purely a message carrier. Under the evidence that I have heard here, that is all he was. ... There is no evidence whatever that he participated in the employment decision to discharge him or put him on administrative leave. [Tr (Vol 3): 215-216].

The O'Neal case is not proof that Respondent Molloy engaged in a conspiracy to injury Haddle or O 'Neal. The case is a factual finding by the District Court Judge that Respondent Molloy did not engage in any wrongful conduct.

SUMMARY OF ARGUMENT

The Morast Court properly applied Kush v. Rutledge because it did not interpret Kush to require Petitioner to allege class-based animus in order to state a cause of action. The Morast Court recognized that Petitioner alleged a conspiracy to obstruct justice in the federal court rather than in a state court.

Section 1985(2) protects parties to federal litigation, not witnesses. The two main decisions cited by Petitioner, Portman v. County of Santa Clara and Irizarry v.

Quiros, both involve injuries to parties to federal proceedings. Section 1985(2) protects a federal litigant from being hampered in presenting an effective case.

Petitioner's at-will employment was not protected by Section 1985(2). Under Georgia law an employee has no right or expectation in continued employment. Therefore, an at-will employee has no constitutionally protected right of employment.

Petitioner has adequate state law causes of action which he plead. These state law rights were created to protect a person's state property interests.

ARGUMENT

1. The Morast Court properly applied Kush v Rutledge.

Contrary to Petitioner's argument, Kush did not signal a view that actions under Section 1985(2) should be given a much broader construction than actions under Section 1985(3).

As codified at the time of the Kush decision, the first part of Section 1985(2) proscribed interference with witnesses in federal courts and the second part of Section 1985(2) applied to conspiracies to obstruct the course of justice in state courts.

Kush held that the plain reading of the second part of Section 1985(2), which pertains to conspiracies to obstruct justice in state courts, contains an equal protection requirement that the first part of

Section 1985(2), which pertains to conspiracies to obstruct justice in the federal courts, did not contain. The difference in the two requirements was the Federal Court's authority and interest in protecting the processes of its own courts and an absence of any need to limit the first part of Section 1985(2) to avoid creating a general federal tort law. Kush v. Rutledge, 460 U.S. at 723.

The Eleventh Circuit properly interpreted the first part of Section 1985(2) because it did not require Petitioner Haddle to allege class-based animus in order to state a cause of action.

2. Petitioner is not a proper party to raise a claim under Section 1985(2).

Petitioner cites Portman v. County of Santa Clara, from the Ninth Circuit, and Irizarry v. Quiros, from the First Circuit, in support of his contention that Morast is wrongly decided. However, the Portman and Irizarry decisions are not helpful to Petitioner. Both these decisions involved injury to an underlying party in a federal proceeding. Petitioner was not a party in the underlying federal criminal case, he was only a witness. Section 1985(2) protects only parties to federal court proceedings.

The Ninth Circuit made absolutely clear this requirement of injury to a party in an underlying action in David v. United States, 820 F.2d 1038, 1040 (9th Cir. 1987). In David, the Section 1985(2) plaintiff claimed she had been discharged from employment

because she acted as a witness in a separate federal court proceeding to which she had not been a party. The Court stated as follows:

> David has not alleged how she has been injured by her testimony in Parodi or her failure to appear in court. Allegations of witness intimidation under Section 1985(2) will not suffice for a cause of action unless it can be shown the litigant was hampered in being able to present an effective case. Id. Since David has not shown she was a party to the actions in which she was intimidated, she can show no injury under Section 1985(2). 820 F.2d at 1040.

The Seventh Circuit has adopted the same position. In Rylewicz v. Beaton Service, Ltd., et al., 888 F.2d 1175, at 1180 (7th Cir. 1989), citing Rode v. Dellarciprete, 845 F.2d 1195, (3rd Cir. 1988) and David, supra, the Seventh Circuit held:

> . . .remedial Sections 1985(3) and 1986 have been held to give monetary relief only to a "party" and not a mere witness such as Mr. Cummings.

But see Brewer v. Rockwell International Corp., 40 F.3d 1119, 1125 (10th Cir. 1994) for a contrary position.

Even Kush involved a plaintiff who alleged that Defendants conspired to intimidate his potential witnesses in a federal lawsuit.

Petitioner was not a party to the underlying federal criminal case against Jeanette Garrison, HLM and Kelly upon which Appellant bases his Section 1985(2) claim. Unlike the plaintiffs in Irizarry and Portman, Appellant was only a witness, not a party, in the separate federal litigation. Because he was not a party to the separate federal proceeding, Petitioner's ability to present an effective case in federal court was not injured. Only parties have standing under the First, Seventh, and Ninth Circuits' approach to the issue because it is the interest in being able to fully litigate a party's case in the federal courts that constitutes the protected federal interest. Petitioner had no such federal interest implicated; therefore, it was proper to dismiss his Section 1985(2) claim.

3. Petitioner's at-will employment was not protected by Section 1985(2).

Petitioner acknowledges that he was an employee at-will. Under Georgia law, if an employee's employment is terminable at-will, the employer with or without cause, and regardless of its motives, may discharge the employee without liability. O.C.G.A. Section 34-7-1; Georgia Power Co. v. Busbin, 242 Ga. 612, 250 S.E.2d 442 (1978).

Under Georgia law, an employee at-will has no right or expectation to continued employment. Therefore, the Eleventh Circuit correctly ruled in Morast that Petitioner had no constitutionally protected interest in continued employment, and, therefore, did not suffer an actual injury required to state a claim under 42 U.S.C. Section 1985(2).

Morast v. Lance, 807 F.2d 926, 930 (11th Cir. 1987).

Such a ruling is consistent with this Court's holding in Kush which protected the ability of a federal litigant to effectively present his case. Section 1985 does not afford protection to a non-party's state property interest in his employment.

4. **Petitioner has adequate state law remedies.**

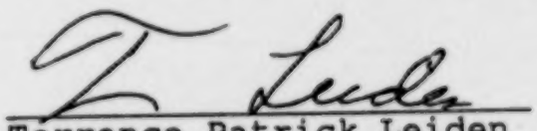
A reading that Section 1985(2) does not protect a non-party's state property interest in his employment does not leave Petitioner without remedy. Petitioner alleged a number of state law causes of action against Respondents including tortious interference with his employment and violation of the Georgia Racketeer Influenced and Corrupt Organizations (RICO) Act. These state law statutes were created to protect a person's state property interests and were available to Petitioner.

CONCLUSION

The decisions cited by Petitioner make it clear that Section 1985(2) exists for the benefit of parties, not witnesses. The protected interest is a party's ability to present an effective case in federal court. Petitioner alleges no such injury. The Eleventh Circuit Court of Appeals' decision in Morast is consistent with the decisions of other Circuits and did not leave Petitioner without a remedy. Petitioner was free to pursue his state law claims in State Court.

WHEREFORE, Respondent Molloy respectfully requests that this Court deny Petitioner's Petition for a Writ of Certiorari.

Respectfully submitted,



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